PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re The Application Of	
Gary S. Foster, *et al.*	Examiner: Felten, Daniel S.
Serial No.: 09/931,123	Group Art Unit: 3624
Filed: August 16, 2001	Confirmation No. 3575
For: Creation Of Pseudo Block To Assist In System For Facilitating Trade Processing And Trade Management	

Appeal Brief Under 37 C.F.R. §1.192

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Having filed herewith a Notice of Appeal from the final rejection of Claims 1-28, all of the claims currently pending, the final rejection being mailed on April 6, 2004, Appellant submits its Appeal Brief for the above-captioned application pursuant to 37 C.F.R. §1.192 in triplicate as follows.

Certificate of Mailing: I hereby certify that this correspondence is today being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: : Mail Stop Appeal Brief – Patents; Commissioner for Patents; P.O. Box 1450; Alexandria, VA 22313-1450.

July 30, 2004 Tamara L. Millikan

Real Party in Interest

The real party in interest is Omgeo LLC, having an office at 22 Thomson Place, Boston, MA 02210.

Related Appeals and Interferences

There are no related appeals or interferences.

Status Of Claims

Claims 1-28 are currently pending, stand rejected and are the subject of the instant Appeal. A copy of each of these claims is attached hereto as Exhibit A.

Status Of Amendments

Subsequent to the Final Rejection being mailed on April 6, 2004, Appellant has filed no Amendments.

Summary Of Invention

As described in the specification, the claimed invention relates to an apparatus and method for facilitating the processing and settlement of an already executed securities trade 10. The apparatus and method compares trade execution

information 28 received from one trading party with trade allocation information 30 received from a second trading party and determines that a match exists if block level trade execution information and block level trade order information correlate within a set of predefined acceptable trade parameters. Before making such a comparison, however, the apparatus and method determines block level trade execution information based upon the received trade execution information 28 and determines block level trade order information based upon the received trade order information 30. (See Figure 2 and Paragraphs [0029] and [0030] for a concise description of the most pertinent aspects of the invention).

References Cited And Applied

(1) U.S. Patent No. 4,823,265 to Nelson.

(2) U.S. Patent No. 5,230,048 to Moy.

Grounds Of Rejection

Claims 1-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Moy.

Issues Presented For Review

(1) Whether a rejection is proper under 35 U.S.C. 103(a) when even if the references are combined as suggested by the Examiner, the resulting combination does still does not include at least one limitation of each claim.

Grouping of Claims

The claims do not stand or fall together. Independent Claim 1 is directed to an apparatus which compares trade execution information received from one trading party with trade allocation information received from a second trading party and determines that a match exists if block level trade execution information and block level trade order information correlate within a set of predefined acceptable trade parameters. Independent Claim 10 relates generally to the same type of system, but requires certain additional specific and novel limitations directed to how block level information is determined from the trade execution information. Independent Claim 15 is directed to a method of operation of the system of Claim 1, and while Claims 1 and 15 share common subject matter, the Claims are materially different in scope. Similarly, Independent Claim 24 is directed to a method of operation of the system of Claim 10, and while Claims 10 and 24 share common subject matter, the Claims are materially different in scope. Thus, each

of the independent claims is materially different in scope, and they do not stand or fall together.

Each of the dependent claims adds specific additional elements to the novel combination of the independent claims. As such, all claims must be considered because it is improper to fail to consider any limitation in the claims. In re Geerdes, 491 F.2d 1260, 1262, 180 U.S.P.Q. 789, the 791 (CCPA 1974) ("every limitation in the claim must be given effect rather than considering one in isolation from the others").

Argument

The present invention is directed to an apparatus and method for facilitating the processing and settlement of an already executed securities trade. The apparatus and method determines block level trade execution information based upon the received trade execution information and determines block level trade order information based upon the received trade order information. The apparatus and method then compares the block level trade execution information with the block level trade order information and determines that a match exists if the block level trade execution information and the block level trade order information correlate within a set of predefined acceptable trade parameters.

Thus, in accordance with the system and method of the present invention as claimed, it is block level trade execution information and block level trade order information which is compared.

Appellant respectfully submits that none of the cited prior art, nor any prior art of which Appellant is aware, discloses, teaches or suggests these limitations. Nelson discloses an apparatus and method for processing transactions in renewable options in stocks or other securities, while Moy discloses a method and apparatus for allowing multiple users to monitor stock market data. At least in part because these two systems are concerned with solving completely different problems than is the present invention, Appellants respectfully submit that there are numerous elements common to all claims which are not disclosed, taught or suggested by the two cited references, either alone or in combination.

All claims require the receipt of trade execution information, which trade execution information is indicative of an executed trade by the first trading party, and trade allocation information, which trade allocation information is indicative of an ordered trade by the second trading party. As neither Nelson nor Moy is concerned with facilitating the settling of a securities trade which has already been executed, neither reference discloses, teaches or suggests any of the above-

highlighted elements. As such, a combination of the cited references would not possess these elements.

In the Final Office Action dated April 6, 2004, the Examiner states a belief that "the concept of 'trade execution information' is equivalent to the data input into the computer by the customer that includes data describing the security involved in the transaction." Appellant respectfully disagrees with this assertion. The claims do not require only "trade execution information." If they did, then perhaps the Examiner's reasoning may be sound. However, the claims of the present invention require trade execution information which is "indicative of an **executed trade** by a first trading party." In Nelson, there is no executed trade. Rather, Nelson deals only with options. While the options may be exercised at some point in the future and a trade may ultimately be exercised, the device of Nelson plays no part in the execution or settlement of any trade.

Moreover, the Examiner's arguments presented in the Final Office Action completely ignore the requirement by all claims of trade order information received by said computer, said trade order information indicative of an ordered trade by a second trading party.

All claims also require a set of acceptable trade parameters, the comparing of the trade execution information with the trade allocation information, and the determining that a match exists if the trade execution information and the trade allocation information correlate within the acceptable trade parameters. Thus, the claims require that two specific types of data sets are compared and a match is determined to exist if the data sets correlate within certain specified parameters. Neither Nelson nor Moy individually, or in combination, discloses, teaches or suggests these limitations.

Nelson briefly discloses a "renewable option exchange which would accept and match offers to purchase, sell and write renewable options." (column 9, lines 35-37). However, when the above quotation is read in its surrounding context, it becomes clear that a "comparing" of two sets of data within a set of "acceptable trade parameters" (as required by all claims) was not even remotely contemplated. Rather, Nelson is concerned only with providing an "exchange" where a variety of entities may gather, offer renewable options, view offered renewable options, and decide to accept or reject listed offers for renewable options. No comparing of data sets is disclosed, and Appellants cannot even conceive of how the required "acceptable trade parameters" element could be considered as being disclosed, taught or suggested. The system and method claimed in the present application

is completely different that the computer-based classified-type system and method disclosed in Nelson.

Moy discloses a method and system for allowing multiple users to monitor stock market data. No comparing of data sets to determine whether a "match" between data sets exists is disclosed. Rather, the system simply presents certain types of stock market related data to users. Moreover, as with Nelson, Appellants cannot even conceive of how the required "acceptable trade parameters" element could be considered as being disclosed, taught or suggested by Moy. As is the case with Nelson, the apparatus and method claimed in the present application is completely different than data reporting apparatus and method disclosed in Moy. Indeed, the Examiner does not (and reasonably can not) cite Moy as disclosing the above-highlighted elements required by all claims.

In the Final Office Action, the Examiner has stated a belief that the term "acceptable trade parameters" has not been clearly defined in the claims and that as such, the Examiner "has taken the broadest interpretation of the aforementioned limitation that is consistent with the teachings of Nelson and Moy." However, the Examiner has provided no explanation as to how either Nelson or May discloses, teaches or suggests the limitation other than a general citation to

certain sections of Nelson (i.e., Figures 4a-d, col. 3, ll. 5+; col. 4, ll. 21+). Appellant cannot, even after careful study of the cited sections, ascertain which teachings therein the Examiner believes comprise a disclosure of "acceptable trade parameters."

Similarly, with respect to the "matching" requirements of all claims, the Examiner has provided no explanation as to how either Nelson or May discloses, teaches or suggests the limitation other than a general citation to certain sections of Nelson (i.e., col. 1, ll. 48-55; col. 9, ll. 29-41; and col. 15, ll. 41+). Again. Appellant cannot, even after careful study of the cited sections, ascertain which teachings therein the Examiner believes comprise a disclosure of "matching" as claimed (see above). It appears that the Examiner merely attempted to cite all sections of the specification where the word "match" exists, even though the word is used in a completely different context than it is in the claims, and even though the "matching" contemplated by Nelson is not at all what is claimed in the present application.

The requirements of the Claims do not stop there, however. All claims further require the determination of block level trade execution information based upon the received trade execution information and the determination of block level

trade order information based upon the received trade order information. All claims also require that it is such block level trade execution information and block level trade order information which is compared to determine whether or not a match exists.

The determination of the block level information provides a number of significant benefits, as described in detail in the current application in paragraphs [0029] - [0032]. Specifically, it should be recognized that the trade execution information and the trade allocation information may be submitted in a number of ways. For example, the information may be submitted at a block level (i.e., at a trade level) with the associated allocation level (i.e., showing the contract detail for the trade) being submitted therewith, or the information may be submitted at the allocation level only. Such may complicate the pairing and matching processes, as the apparatus and method of the present invention is concerned with matching block level information. Thus, the apparatus and method of the present invention preferably determines block level trade execution information and block level trade allocation (or order) information based upon the trade execution information and the trade allocation information respectively. If the block level information is supplied in the trade execution information and the trade allocation information, the block level information is simply extracted therefrom. However, if the block

level information is not supplied in the trade execution information and the trade allocation information, the apparatus and method of the present invention creates block level information (called a pseudo block) by summing up the data contained within the allocation level information (i.e., showing the contract detail for the trade).

Thus, it should be clear to one skilled in the art in light of the Specification and Claims of the present application that what is meant by "block level" information is the combined information directed to an entire trade (as opposed to "allocation level" information which would be indicative of how the securities involved in the trade are split between various individual investors). For example, if an investment manager (i.e., an orderer) submits trade allocation information which includes block level trade information indicating a total of 1000 shares of IBM and allocation level trade information showing orders for 200 shares each for 5 separate funds making up the block level trade, and a broker (i.e., an executor) submits only the allocation level trade information for the 5 separate funds, the apparatus and method of the present invention creates a pseudo block level trade for the broker summing up the allocation level trade information to show a block level trade of 1000 shares. Thus, even though the counterparties are entering the trade information in different formats (i.e., one in block level format and the other

in allocation level format), the pseudo block created by the apparatus and method of the present invention allows matching at the block level as well as at the allocation level.

Appellants respectfully submit that the above-highlighted requirements of all claims are not even hinted at by either Nelson or Moy. Indeed, the Examiner expressly recognizes that Nelson fails to disclose such limitations. With respect to Moy, while Moy does mention "block trades", the "block trades" with which Moy is concerned have nothing at all to do with the required "block level" information required by all claims. Moy simply considers any large trade to be a "block trade" ("The block trade ticker (bt) identifies all trades which exceed ten thousand shares"; col. 6, lines 6-8). Such large "block trades" are provided to users on a separate ticker. This information may be particularly interesting to some investors, as large trades may have a measurable effect on share price, etc.

Moy, however, does not disclose, teach or suggest the determination of block level trade execution and/or order information based upon received trade execution and/or order information, and/or the comparison of such block level trade execution and order information to determine whether or not a match exists. The only thing Moy teaches is that large trades (i.e., those over 10,000 shares)

are identified on a separate "block trade" ticker. It is worth noting that in the context of the present invention, a block trade need not be nearly so large. In fact, a block trade in the context of the present invention may involve only two shares of a security (one share allocated to each of two parties). Similarly, even in the example given in paragraph [0030] of the application as filed, the "block level trade information" concerns only 1000 shares of a security. Moy would not consider either of these examples to be "block trades."

Furthermore, even if Nelson and Moy were combined, the resulting apparatus or method would not anticipate or render obvious the present invention as claimed. Rather, the result of such a combination would be an "exchange" where a variety of entities may gather, offer renewable options, view offered renewable options, and decide to accept or reject listed offers for renewable options (as taught by Nelson) which includes a block trade ticker which identifies all executed trades which exceed ten thousand shares (as taught by Moy). Appellants respectfully submit that this is not even close to what is claimed.

With respect to the Examiner statements in the Final Office Action concerning "block trades", Appellant does not understand these statements, and therefore cannot address them in any meaningful way. Suffice it to say that the

"block trades" contemplated by Moy are nothing even similar to the "block level" information as claimed, as fully highlighted above.

As neither Nelson nor Moy, either alone or in combination, discloses, teaches or suggests each of the elements required by all claims, and as both references are concerned with solving completely different problems than is the claimed invention, Appellants respectfully submit that there is no basis for a rejection under 35 U.S.C. §103(a).

Conclusion

Appellant has made a significant advance over the prior art by creating a system for facilitating the processing and settlement of securities trades which reduces the time required for settlement, which reduces the amount of information required to be input by the parties for each trade, which reduces the number of human interactions in the settlement process, which permits the parties to define settlement standards to automate and thereby speed trade settlements, which provides the parties to the settlement with value added data, which is more reliably capable of achieving settlement within less than three days of the trade date, which permits all parties to a trade to view the status of the trade in real-time, and which is

capable of calculating a trade's net amount with minimum input by the trading parties. Accordingly, reconsideration and allowance of all pending claims is believed in order, and such action is earnestly solicited.

Respectfully submitted,

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EXHIBIT A - Pending Claims

1. An apparatus for facilitating the processing and management of a securities trade comprising:

a computer;

trade execution information received by said computer, said trade execution information indicative of an executed trade by a first trading party;

software executing on said computer for determining block level trade execution information based upon said trade execution information;

trade order information received by said computer, said trade order information indicative of an ordered trade by a second trading party;

software executing on said computer for determining block level trade order information based upon said trade order information;

a set of predefined acceptable trade parameters; and

software executing on said computer for comparing the block level trade execution information with the block level trade order information, and for determining that a match exists if the block level trade execution information and the block level trade order information correlate within said set of predefined acceptable trade parameters.

2. The apparatus of claim 1 wherein said trade execution information comprises an indication of the block level trade execution information, and wherein said software executing on said computer for determining block level

trade execution information comprises software executing on said computer for extracting the block level trade execution information from said trade execution information.

3. The apparatus of claim 1 wherein said trade execution information comprises an indication of allocation level trade execution information but not an indication of the block level trade execution information, and wherein said software executing on said computer for determining block level trade execution information comprises software executing on said computer for generating block level trade execution information based upon the allocation level trade execution information.

4. The apparatus of claim 3 wherein the generated block level trade execution information is replaced by block level trade execution information later received by said computer.

5. The apparatus of claim 1 wherein said trade order information comprises an indication of the block level trade order information, and wherein said software executing on said computer for determining block level trade order information comprises software executing on said computer for extracting the block level trade order information from said trade order information.

6. The apparatus of claim 1 wherein said trade order information comprises an indication of allocation level trade order information but not an indication of the block level trade order information, and wherein said software executing on said computer for determining block level trade order information comprises software executing on said computer for generating block level trade order information based upon the allocation level trade order information.

7. The apparatus of claim 6 wherein the generated block level trade order information is replaced by block level trade order information later received by said computer.

8. The apparatus of claim 1 wherein said trade execution information and said trade order information may be received by said computer in any order.

9. The apparatus of claim 1 wherein said trade execution information and said trade order information may be received by said computer at any time prior to trade settlement.

10. An apparatus for facilitating the processing and management of a securities trade comprising:

a computer;

trade execution information received by said computer, said trade execution information indicative of an executed trade by a first trading party;

software executing on said computer for, if said trade execution information comprises an indication of block level trade execution information, extracting the block level trade execution information from said trade execution information and for, if said trade execution information comprises an indication of allocation level trade execution information but not an indication of the block level trade execution information, generating block level trade execution information based upon the allocation level trade execution information;

trade order information received by said computer, said trade order information indicative of an ordered trade by a second trading party;

software executing on said computer for, if said trade order information comprises an indication of block level trade order information, extracting the block level trade order information from said trade order information and for, if said trade order information comprises an indication of allocation level trade order information but not an indication of the block level trade order information, generating block level trade order information based upon the allocation level trade order information;

a set of predefined acceptable trade parameters; and

software executing on said computer for comparing the block level trade execution information with the block level trade order information, and for determining that a match exists if the block level trade execution information and

the block level trade order information correlate within said set of predefined acceptable trade parameters.

11. The apparatus of claim 10 wherein, if the block level trade execution information has been generated, the generated block level trade execution information is replaced by block level trade execution information later received by said computer.

12. The apparatus of claim 10 wherein, if the block level trade order information has been generated, the generated block level trade order information is replaced by block level trade order information later received by said computer.

13. The apparatus of claim 10 wherein said trade execution information and said trade order information may be received by said computer in any order.

14. The apparatus of claim 10 wherein said trade execution information and said trade order information may be received by said computer at any time prior to trade settlement.

15. A method for facilitating the processing and management of a securities trade comprising the steps of:

receiving trade execution information, the trade execution information indicative of an executed trade by a first trading party;

determining block level trade execution information based upon the trade execution information;

receiving trade order information, the trade order information indicative of an ordered trade by a second trading party;

determining block level trade order information based upon the trade order information;

comparing the block level trade execution information with the block level trade order information, and determining that a match exists if the block level trade execution information and the block level trade order information correlate within a set of predefined acceptable trade parameters.

16. The method of claim 15 wherein the trade execution information comprises an indication of the block level trade execution information, and wherein said determining block level trade execution information step comprises the step of extracting the block level trade execution information from the trade execution information.

17. The method of claim 15 wherein the trade execution information comprises an indication of allocation level trade execution information but not an indication of the block level trade execution information, and wherein said

determining block level trade execution information step comprises the step of generating block level trade execution information based upon the allocation level trade execution information.

18. The method of claim 17 further comprising the step of replacing the generated block level trade execution information with later received block level trade execution information.

19. The method of claim 15 wherein the trade order information comprises an indication of the block level trade order information, and wherein said determining block level trade order information step comprises the step of extracting the block level trade order information from the trade order information.

20. The method of claim 15 wherein the trade order information comprises an indication of allocation level trade order information but not an indication of the block level trade order information, and wherein said determining block level trade order information step comprises the step of generating block level trade order information based upon the allocation level trade order information.

21. The method of claim 20 further comprising the step of replacing the generated block level trade order information with later received block level trade order information.

22. The method of claim 15 wherein the trade execution information and the trade order information may be received in any order.

23. The method of claim 15 wherein the trade execution information and the trade order information may be received at any time prior to trade settlement.

24. A method for facilitating the processing and management of a securities trade comprising the steps of:

receiving trade execution information, the trade execution information indicative of an executed trade by a first trading party;

extracting the block level trade execution information from the trade execution information if the trade execution information comprises an indication of block level trade execution information, and, if the trade execution information comprises an indication of allocation level trade execution information but not an indication of the block level trade execution information, generating block level trade execution information based upon the allocation level trade execution information;

receiving trade order information, the trade order information indicative of an ordered trade by a second trading party;

extracting the block level trade order information from the trade order information if the trade order information comprises an indication of block level trade order information, and, if the trade order information comprises an indication of allocation level trade order information but not an indication of the block level trade order information, generating block level trade order information based upon the allocation level trade order information; and

comparing the block level trade execution information with the block level trade order information, and determining that a match exists if the block level trade execution information and the block level trade order information correlate within a set of predefined acceptable trade parameters.

25. The method of claim 24 wherein, if the block level trade execution information has been generated, said method further comprises the step of replacing the generated block level trade execution information with later received block level trade execution information.

26. The method of claim 24 wherein, if the block level trade order information has been generated, said method further comprises the step of replacing the generated block level trade order information with later received block level trade order information.

27. The method of claim 24 wherein the trade execution information and the trade order information may be received in any order.

28. The method of claim 24 wherein the trade execution information and the trade order information may be received at any time prior to trade settlement.